

they were at variance. Dr. Rush's wish that the best site should be selected was not in fraud of, but in furtherance of, the power and its object.

8. It was conceded that a good appointment was possible, notwithstanding the promise and agreement, if a *bonâ fide* effort had been made to execute the power, free from their influence. The deed was condemned because it had been conclusively proven that similar ones had been made for a purpose not authorized by the power. The oath of the donee did not touch the real taint of the transaction, viz., the previously imposed and still existing, obligation upon the appointee.

9. The only effect of holding the appointment invalid was, to let the fund go amongst the children, but here the effect will be to confer upon a stranger, a power that the testator was willing to entrust only to his most intimate friend.

#### IV.

The proper remedy, if Mr. Williams, by reason of his promise, be disqualified from building on the lot selected, would be, to ascertain whether or not it is a proper site, and if not, to enjoin him against building thereon, which would still permit his execution of the power conferred upon him by the will.

We have shown that the complainants have sought to invent a new crime, but, like all other revolutionists, not content with this, they have also devised a barbarous and hitherto unheard-of punishment. With them there is no *locus penitentiæ*, but the Guillotine is immediately demanded—though, being needed for equitable purposes, they call

